In the High Court of Punjab & Haryana at Chandigarh.

Civil Writ Petition No.3647 of 1991.

Date of decision:22-11-2007

Inder Singh.

...Petitioner.

Versus

State of Haryana and another.

...Respondents.

...

Coram: Hon'ble Mr. Justice K. C. Puri.

...

Present: Mr.B.S.Sidhu Advocate with Mr. Amit Kumar Advocate for the petitioner.

Mr. M.S.Sindhu, DAG Haryana for respondent No.1.

Mr.P.S.Chauhan Advocate for respondent No.2.

...

K. C. Puri, J.

Judgment.

The petitioner has filed this writ petition under Articles 226/227 of the Constitution of India for issuance of a suitable writ to quash his termination order, Annexure P-6.

It is pleaded that the petitioner had joined the respondent, a State Government Undertaking as an Accountant against a regular and permanent post on 20.7.1984. His work and conduct had been satisfactory. The petitioner was General Secretary of Haryana Kalyan Nigam Workers' Union, Cashier of Sirsa Karamchari Sangh and State Executive Member of

Sarv Vichar Manch, Sirsa. The petitioner being labour leader had to safeguard and fight for the interests of workers/employees. The District Manager used to work in an arbitrary manner against the interests of workers and committed financial irregularities and on that count he wanted to get rid of the petitioner. The conditions of service are governed by the Haryana Harijan Kalyan Nigam Employees Service Bye-laws and Haryana Civil Services Rules. The petitioner was suspended on 25.8.1989 without giving any charge-sheet and list of allegations.

The respondent No.2 vide order dated 12.9.1989 issued show cause notice as to why the petitioner should not be removed from service for having violated clause 6.3(f) of Bye-laws for committing fraud and embezzlement and he was directed to explain his position within 15 days. The petitioner filed reply on 30.9.1989. The respondent No.2 without applying his mind and without giving any charge-sheet appointed Shri G.S.Nard, Senior Accounts Officer, Haryana Harijan Kalyan Nigam Limited as an Enquiry Officer. The Enquiry Officer conducted the enquiry in which the petitioner participated on 5.1.1990. The Enquiry Officer had written to the Executive Officer of the Establishment Branch of the State Nigam office at Chandigarh for giving a charge-sheet to the petitioner which has not been served upon him. The Enquiry Officer informed the petitioner that the charge-sheet would be served in due course of time. The Enquiry Officer examined two witnesses Sube Singh, Clerk and Siri Chand Sharma, Clerk on 5.2.1990 without serving charge sheet thereby prejudicing the right of the petitioner. After the examination of the above mentioned two witnesses, the petitioner was not called upon to enter upon his defence and was not

given any opportunity to defend his case. The respondent No.2 after realising that no case was made out against the petitioner removed the Enquiry Officer and dropped the enquiry vide order dated 15.2.1990 withdrawing his earlier order dated 20.10;1989. No new Enquiry Officer was appointed nor any enquiry was conducted. No show cause notice was served upon the petitioner. On the false assumption that the petitioner had confessed his guilt before the District Manager removed him from service vide order dated 15.2.1990. The respondent has passed the said order illegally, arbitrarily, by scuttling, by-passing the enquiry already dropped. Only to get rid of the petitioner, the respondent has relied upon confessional statement, Annexure P-7. The petitioner has contested the confessional statement and the same has been challenged but in spite of that, the petitioner has been removed from service.

It is further pleaded that the petitioner submitted a demand notice before the Government under Section 10 of the Industrial Disputes Act but the Government instead of making the reference to the Tribunal illegally, arbitrarily and without jurisdiction declined the reference. The confessional writing of the petitioner is denied and is inadmissible. A prayer has been made for quashing the impugned order, Annexure P-6,vide which his services have been terminated.

Respondent No.2 filed written statement denying the contents of the petition. It is submitted that the petitioner has admitted his guilt, vide writing, Annexure R-4 and as such there was no necessity to hold an enquiry. An admitted fact is not required to be proved. It is submitted that the petitioner has made embezzlement. The enquiry was held by the

Accounts Officer (Audit) who submitted his report dated 25.8.1989 and on the basis of the same, the petitioner was put under suspension. The charge sheet and other relevant documents were supplied to the petitioner within reasonable time. The petitioner has admitted that he has withdrawn the amount of the cheque by forging the signatures of District Manager. According to the audit report, the petitioner has embezzled an amount of Rs.90,099.05P as detailed in Annexure R-7. The petitioner was rightly removed from service after taking into account all the relevant facts.

It is further pleaded that after passing the said order, the petitioner served a demand notice under Section 2-A of the Industrial Disputes Act but that demand notice was not maintainable and was not covered within the definition of workman as provided in Section 2(s) of the Industrial Disputes Act. The petitioner was drawing more than Rs.1,600/- per month. The office of the District Manager was not industry nor the function of District Manager related to any industry. The petitioner was posted at Sirsa in the office of District Manager whose entire function was to grant loan to Scheduled Castes and Scheduled Tribes and that office is not an industry as defined in Section 2(j) of the Industrial Disputes Act. It is further pleaded that the petitioner has been rightly removed on account of admission of his guilt regarding the cheque in question.

I have heard arguments of learned counsel for the parties and have gone through the record carefully.

The learned counsel for the petitioner has argued in lines of pleadings made in the writ petition. It is submitted that Haryana Harijan Kalyan Nigam Limited makes the bye-laws namely Haryana Harijan

Kalyan Nigam Limited Employees Service Bye-laws (hereinafter mentioned as bye-laws). According to bye-law 6.2, the penalty referred to in bye-law 6.1 can be imposed by an order in writing of the competent authority in accordance with the procedure laid down in C.S.R. The respondent has not adhered to the procedure laid down in the CSR. No charge sheet has been served upon the petitioner. Show cause notice was issued and that was duly replied by the petitioner denying the allegations. The Enquiry Officer was appointed who examined two witnesses but abruptly that Enquiry Officer was removed. The order of removal from service has been passed on the basis of alleged confessional statement, Annexure R-4. Even from the perusal of said document, no case is made out. So, in these circumstances, the impugned order, Annexure P-6, is liable to be set aside.

In reply to the above noted submissions, the learned counsel for the respondent has submitted that according to bye-law 6.3(f), if an employee is guilty of theft, pilferage, fraud, dishonesty, misappropriation, defalcation or embezzlement, in that case, he can be proceeded against under bye-law 6.1 of the above-said bye-laws. Rule 6.2 is not applicable since the petitioner has admitted the factum of drawing Rs.5,400/- from the Bank by forging the signatures of District Manager, vide letter, Annexure R-4. The Enquiry Officer was removed as he was conniving with the petitioner. A fact admitted need not be proved. An employee who forged the signatures of District Manager is not entitled to be kept in service. Vide Annexure R-7, the Auditor has pointed out that the petitioner has embezzled an amount of Rs.90,099.05P. A criminal case regarding embezzlement was registered against the petitioner and he was ultimately convicted although

appeal is pending.

From the submissions made by both sides, the following questions of law are formulated:-

"1. Whether the removal of the petitioner from service is liable to be set aside being against the principles of natural justice?

The main grievance ventilated by the petitioner is that he has been punished without any enquiry, without any charge sheet and that an opportunity of being heard was not given. It is settled law that a fact admitted is not required to be proved. Show cause notice was issued to the petitioner and it was mentioned in the show cause notice dated 18.9.1989 that the District Manager, Haryana Harijan Kalyan Nigam, Sirsa has reported vide his letter dated 22.8.1989 that the petitioner has encashed a cheque bearing No.494533 dated 18.8.1989 of State Bank of Patiala Sirsa for Rs.5,400/- by forging signatures of the District Manager, Sirsa whereas counter foil was for Rs.709.75P in favour of Canara Bank, Pannuwali, District Sirsa. The District Manager acquired the knowledge of the said fact qua the petitioner in his office in the presence of Siri Chand Clerk and Sube Singh, Clerk. In their presence, the petitioner accepted that he has forged the signatures of Jagdish Chandra, District Manager and withdrew an amount of Rs.5,400/- from the State Bank of Patiala, Sirsa and he has confessed his guilt in writing. It is further mentioned in the show cause notice that the petitioner has deposited the said amount with the District Manager, Sirsa on the same day i.e. 18.8.1989. It has been further mentioned in the show cause notice that the petitioner has violated the condition of service bye-laws

under clause 6.3 (f) by committing fraud and embezzlement and penalty of removal from service from the Nigam was proposed. The petitioner was given an opportunity to explain his position within 15 days from the receipt of the said show cause notice. The petitioner filed reply denying the contents of the show cause notice and has submitted that he has not forged the signatures, but, he has deposited the amount under the influence of Manager. It is further mentioned in the reply that a letter was got written from him that the District Manager will watch his interest, Exhibit R4. It has been specifically mentioned in the writing Annexure R4 that the amount withdrawn from the Bank be got deposited from the petitioner. He has further admitted in Annexure R4 that due to mistake, cheque amount has been withdrawn. So,after the admission of the guilt by the petitioner, there was no need to proceed with the enquiry report. No doubt, the Enquiry Officer was appointed in the present case, but, that order was withdrawn as the petitioner has admitted his guilt.

Once it is proved that an employee has forged signatures of the Manager and had withdrawn the amount, no legal right is vested in the employee to remain in service of the institution. There is fiduciary relationship between the employer and the employee. In case an employee commits forgery while dealing with the official duty, he should not be allowed to remain in service at any cost. From the perusal of Annexure R2, it is revealed that there are allegations of embezzlement of Rs.90,099.05P on various occasions. During the course of arguments, it is admitted by the learned counsel for both sides that the petitioner has been convicted in a criminal case for embezzlement in respect of funds of the employer. No

doubt, the appeal is stated to be pending but the fact remains that if such an employee is allowed to be kept in service, in that case he can commit fraud of any type.

The counsel for the petitioner has submitted that the signatures of petitioner on Annexure R4 have been obtained by the District Manager under undue influence. However, that contention cannot be accepted. The petitioner has himself admitted in the petition that he is office bearer of so many institutions and as such it cannot be believed that the District Manager could get the signatures of such a person under undue influence. Otherwise also, the petitioner has admitted the fact that he has deposited Rs.5,400/- in respect of the cheque in question. The very fact that the petitioner has deposited the amount withdrawn by him on the basis of forged signatures of District Manager goes a long way to prove his guilt.

In view of the above discussion, the above said question of law stand answered against the petitioner. No ground is made out to interfere in the present writ petition and consequently this petition stand dismissed.

November 22 ,2007. (K. C. Puri)
Jaggi Judge